

18 FEB 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Precision Consumer Products, Inc.

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Serial No. 76208433

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Ezra Sutton for Precision Consumer Product, Inc.

Jeffrey S. Molinohoff, Trademark Examining Attorney, Law  
Office 103 (Michael Hamilton, Managing Attorney).

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Before Hanak, Hairston and Bucher, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Precision Consumer Products, Inc. (applicant) seeks to register EZ CLEAN in the form shown below for "all-purpose household cleaners and dish detergents." The application was filed on February 9, 2001 with a claimed first use date of September 30, 1999. At the request of the Examining Attorney, applicant disclaimed the exclusive right to use CLEAN apart from the mark in its entirety.

Citing Section 2(d) of the Trademark Act the Examining Attorney has refused registration on the basis that applicant's mark, when used in connection with applicant's goods, is likely to cause confusion with the mark EZZY CLEAN, previously registered in the form shown below for "all purpose cleaner and degreaser preparation, for household and industrial use, for cleaning rubber, vinyl, motors, marine vessels, patios, grills, office machinery and bathroom fixtures." Registration No. 1,839,183. When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the goods and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192

USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

Considering first the goods, we find that they are, in part, legally identical. Applicant's goods include "all-purpose household cleaners." Registrant's goods include "all purpose cleaner ... for household ... use." The fact that the recitation of goods of the cited registration lists specific uses is of no consequence inasmuch as applicant's recitation of goods contains no limitation as to specific uses.

Turning to a consideration of the marks, we note at the outset that when the goods of the parties are in part legally identical as is the case here, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Marks are compared in terms of visual appearance, pronunciation and meaning or connotation. In terms of pronunciation, the marks are absolutely identical. Both marks end with the identical word CLEAN. Moreover, there is no dispute that the initials EZ in applicant's mark and

the word EZZY in registrant's mark have the same pronunciation. Thus, in terms of pronunciation, the marks are absolutely identical.

Likewise, in terms of connotation the marks are also identical. Both marks convey that notion that these products will clean household items with ease.

Finally, in terms of visual appearance, there can be no dispute that these marks have a somewhat different appearance. However, we think that the differences in overall visual appearance are simply outweighed by the fact that the marks are absolutely identical in terms of pronunciation and meaning, and the additional fact that both marks are used on legally identical, inexpensive consumer products. In short, we find that the contemporaneous use of these two marks on legally identical goods will result in a likelihood of confusion.

Decision: The refusal to register is affirmed.